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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 LOUIS FLORES,

4 Plaintiff,

5 v.

17 CV 36 (JGK)

6 UNITED STATES DEPARTMENT OF
7 JUSTICE,

8 Defendant.

9 New York, N.Y.
10 April 13, 2017
5:00 p.m.

11 Before:

12 HON. JOHN G. KOELTL,

13 District Judge

14 APPEARANCES

15 LOUIS FLORES
16 Pro Se Plaintiff

17 JOON H. KIM
18 Acting United States Attorney for the
19 Southern District of New York
20 REBECCA S. TINIO
21 Assistant United States Attorney
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1 (Case called)

2 MR. FLORES: Louis Flores, the pro se plaintiff.

3 MS. TINIO: Good afternoon, your Honor. Rebecca Tinio
4 from the U.S. Attorney's Office for the defendant.

5 THE COURT: Good afternoon. This is a FOIA case,
6 right?

7 MR. FLORES: Yes, your Honor.

8 THE COURT: There is a complaint. So, as I read it,
9 in essence, the plaintiff is looking for a speech that was
10 given by Mr. Bharara.

11 MR. FLORES: I'm looking for four categories of
12 documents relating to speeches delivered by the former U.S.
13 attorney Preet Bharara; yes, your Honor.

14 THE COURT: What's the defendant's position? The
15 defendant hasn't yet answered, right?

16 MS. TINIO: We did answer, your Honor.

17 THE COURT: You did.

18 MS. TINIO: Yes.

19 THE COURT: Tell me what the gist of the answer is.

20 MS. TINIO: Well, your Honor, the main developments
21 are that yesterday the Executive Office of the U.S. Attorneys,
22 upon remand from Mr. Flores's administrative appeal, determined
23 that the EOUSA would grant Mr. Flores a fee waiver, and based
24 on EOUSA's determination issued yesterday, the search,
25 collection, and processing of Mr. Flores's requested documents

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1 is now occurring, and it will be completed with no charge to
2 Mr. Flores.

3 MR. FLORES: I object, your Honor.

4 THE COURT: You have an ability to say "yes." What's
5 your objection?

6 MR. FLORES: The defendant forfeited any right to
7 provide any administrative remedy the minute I filed my
8 complaint. And furthermore, in the answer, the defendant
9 claimed that the plaintiff was due no relief, and it is
10 disturbing to me that the answer may say I am due no relief,
11 and 24 hours before the hearing, before we come before your
12 Honor, the defendant changes their story. I would like an
13 explanation and I believe the Court is due an explanation.

14 THE COURT: Actually, I try not to decide cases that
15 are moot just for the sake of requiring explanations. This is
16 a court. I decide cases, controversies, disputes. It's not a
17 play. It's not a theatrical production. It's not a proceeding
18 where I demand explanations or require parties to prostrate
19 themselves before me. I decide disputes, cases, controversies.

20 You asked for certain relief from the government. The
21 government has gotten around to saying that we're going to
22 provide that relief. Okay. How does a case proceed? There's
23 a complaint, there is an answer, and then the case proceeds.

24 You don't think the case is moot. You want to
25 continue it until the government gives you some form of

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1 explanation. I'm not aware that that's a relief that's
2 provided for under the Freedom of Information Act. There are
3 certain indices that the government is otherwise required to
4 produce under the regular procedures of the Freedom of
5 Information Act. But at this point the government says it's
6 collecting the documents and will provide them to you.

7 So, at such time as the government provides them to
8 you, the case would seem to be over. And at that point the
9 government could make a motion to dismiss the case as moot or
10 make a motion for summary judgment or any form of motion. And
11 I'm not sure what the basis is for you that you would have to
12 resist that motion.

13 But plainly the government hasn't provided the
14 documents yet. Certainly any reasonable resolutions would
15 allow the government some time to search for and produce the
16 documents that you've sought.

17 How much time does the government want?

18 MS. TINIO: Your Honor, I couldn't say that with
19 certainty. I think we're certainly willing to provide
20 documents in stages. I know that some are going to be easier
21 than others, so I would anticipate a couple or a few weeks to
22 provide the first release, and hopefully within a couple of
23 months have the entire release completed.

24 THE COURT: That's kind of a long time. Why does it
25 take a couple of months to provide the documents?

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1 MS. TINIO: We can certainly take your Honor's
2 comments and endeavor to do them more quickly. All the
3 searches are occurring in the U.S. Attorney's Office. Some of
4 the requested categories are a little bit tricky. He's
5 requesting cost information which might not be easily
6 segregable, logistical information which may not be easily
7 identifiable. Like I said, there are some easier categories
8 that I believe we'll be able to respond to within a couple of
9 weeks.

10 THE COURT: Okay. So, let me do an order that sets up
11 a schedule. Today is the 13th. The order will say by
12 April 27, two weeks, the government will make its first
13 production of documents sought by the plaintiff in this case.
14 The government will provide a status report on the production
15 of documents by May 25. All documents must be produced by
16 June 2 or an explanation provided by the government. So, I'll
17 enter an order which provides that schedule.

18 Does that schedule seem to you, Mr. Flores, to be
19 reasonable?

20 MR. FLORES: I have concerns, your Honor. This is not
21 the first time I have had to litigate with the DoJ on matters
22 pertaining to FOIA. I expect that the DoJ will probably
23 provide a very minimal production of documents, and then force
24 me to have to litigate through dispositive motion practice
25 which gives them an advantage. So, I am counting on the

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1 government to help make sure that the DoJ complies with FOIA
2 when it makes these productions of documents. And secondly,
3 it's been my experience that the DoJ engages in misconduct
4 because, but for the commencement of litigation, the DoJ does
5 not comply with FOIA. It is a policy of the agency to only
6 comply with FOIA when the filers of FOIA requests commence
7 litigation and the court enters orders.

8 So I'm here seeking relief, and the only relief I will
9 be able to obtain will be at the discretion of this Court. And
10 I'm asking for the judge to make sure that the DoJ complies
11 with FOIA and with the rules of civil procedure during these
12 proceedings so that the pro se plaintiff is not placed at an
13 unfair disadvantage.

14 And to that extent, I want to just note that one of
15 the documents that the DoJ provided to me yesterday was the
16 first time I saw this document. It's dated December 8, 2016,
17 it claims to be the response that the agency provided to my
18 FOIL appeal, which I made seeking administrative relief. I
19 never received that document.

20 This is an example of the kind of misconduct I've
21 witnessed the agency engage in previously. I object to that
22 kind of treatment. Particularly since it's taking place during
23 a proceeding before this Court, I think it's dishonorable of
24 the agency to conduct itself in such a manner.

25 THE COURT: Okay. You've made your statement. My

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1 experience with the U.S. Attorney's Office is that certainly
2 the U.S. Attorney's Office for this district has a good history
3 of complying with FOIA and making documents available. Their
4 clients may, as you point out, need some prodding. But in this
5 case, the documents are all located with, as I understand it,
6 the U.S. Attorney's Office for the Southern District, so that
7 the prodding that sometimes is necessary with respect to other
8 clients and other agencies, I assume won't be needed for the
9 U.S. Attorney's Office for the Southern District of New York,
10 who, after all, is a frequent litigant in the court and whose
11 reputation is important to the office.

12 So, we'll see, Mr. Flores. And the litigation will be
13 conducted in the normal course. If, for some reason, you have
14 a problem with what's going on, you can make a motion, and I'm
15 sure the motion will provoke a response. But ideally, the
16 litigation will proceed smoothly in such a way that you really
17 don't have to concern yourself with unnecessary motions. The
18 government will make its production in a timely fashion, and
19 the case will be over without placing any burdens on you as a
20 pro se litigant. Which is the whole purpose for having the
21 conference today.

22 MR. FLORES: Thank you, your Honor. However, I am
23 here in my capacity as a reporter and as an activist, and as it
24 takes activism to prod the DoJ, I'm prepared to do that. I was
25 on a 22-day fast protesting already, and unfortunately, the DoJ

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1 showed no regard for any of that. And I do anticipate, based
2 on my experience, that although the U.S. Attorney's Office for
3 this district does have a very good reputation, a reputation
4 that I count on as a reporter, and I am as an activist proud
5 about. I do know that agency-wide the DoJ fights every FOIA
6 request. And I do anticipate that there will be resistance to
7 the release of these records, otherwise why did I have to file
8 this complaint.

9 And I'm only asking, in closing, the Court's
10 monitoring of the agency's compliance because they also, in
11 addition, have routinely engaged in violating FOIA as a matter
12 of pattern and practice that's been alleged in the complaint.

13 THE COURT: Sure. Well, when I say "sure" I don't
14 mean that I agree with everything that you've said. But I've
15 set up a schedule. Right. And I assume that the schedule will
16 be met. And as I've said, if you have any problems, you're
17 free to make any motions. And hopefully, that will not be
18 necessary, so you won't have any burdens in this particular
19 litigation.

20 MR. FLORES: Thank you, your Honor.

21 THE COURT: Okay.

22 MS. TINIO: Thank you, your Honor.

23 THE COURT: Okay. Good to see you all. I will enter
24 an order. And Mr. Flores, you're on ECF, right?

25 MR. FLORES: No. I made a request. Your office

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1 requested that I take a course, although I have already had
2 experience and access prior -- I previously had access to ECF
3 in the Eastern District. I was just hoping that as a courtesy
4 you would make that access to me granted without my having to
5 take that whole training course.

6 THE COURT: Mr. Flores, I'm pretty confident that it
7 was not my office that did that. I'm perfectly happy to have
8 you on ECF, and if it is a course requirement, it's something
9 by our regular procedures in the clerk's office. So, we'll
10 look into it. If you want to be on ECF and there is anything I
11 can do to get you on ECF, it's a convenience to us to have you
12 on ECF. Because otherwise, we send out personally to you every
13 order, which we wouldn't if you were on ECF.

14 MR. FLORES: I would prefer to be on ECF, your Honor.

15 THE COURT: That makes two of us.

16 MR. FLORES: Thank you.

17 THE COURT: We'll look at it.

18 MR. FLORES: Thank you very much.

19 THE COURT: Thank you.

20 (Adjourned)